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Attorneys for Defendant
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARTIN VOGEL and KENNETH
MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiffs,

v.

STEVEN P. JOBS, PETER OPPENHEIMER,
FRED ANDERSON, WILLIAM V.
CAMPBELL, MILLARD S. DREXLER,
ALBERT GORE, JR., ARTHUR D.
LEVINSON, JEROME P. YORK and
APPLE COMPUTER, INC.,

Defendants.

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Case No. C06-05208-JF

**STIPULATION AND [PROPOSED]
ORDER REGARDING SCHEDULING
AND RELATED MATTERS**

Department: Ctrm 3, 5th Floor
Judge: Honorable Jeremy Fogel

1 MARTIN VOGEL and KENNETH
2 MAHONEY, on Behalf of Themselves
and All Others Similarly Situated,

3 Plaintiffs,

4 v.

5 APPLE, INC., STEVEN P. JOBS, FRED
6 ANDERSON, NANCY HEINEN, WILLIAM
7 V. CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON, and JEROME P.
YORK

8 Defendants.

Case No. C08-03123-JF

1 WHEREAS, on August 24, 2006, plaintiffs Vogel and Mahoney filed a class action
2 complaint in this Court alleging that certain defendants violated the Securities Exchange Act of
3 1934 (the “Exchange Act”), including § 10(b) and Rule 10b-5 thereunder, and § 20(a). That
4 action is styled as *Martin Vogel and Kenneth Mahoney v. Steven Jobs, et al.*, Case No. 5:06-cv-
5 05208-JF (N.D. Cal.) (“*Vogel I*”);

6 WHEREAS, on January 19, 2007, this Court appointed the New York City Employees’
7 Retirement System (“NYCERS”) as Lead Plaintiff in *Vogel I* and Grant & Eisenhofer P.A. as
8 Lead Counsel in *Vogel I*;

9 WHEREAS, on March 23, 2007, NYCERS filed, as Lead Plaintiff, the Consolidated
10 Complaint and asserted claims under §§ 14(a) and 20(a) of the Exchange Act and for the alleged
11 breach of the common law duty of disclosure. The Consolidated Complaint did not assert any
12 claims for alleged violations of §10(b) of the Exchange Act or Rule 10b-5 thereunder;

13 WHEREAS, on November 14, 2007, this Court granted the defendants’ motion to dismiss
14 the Consolidated Complaint (“Dismissal Order”);

15 WHEREAS, on December 14, 2007, NYCERS filed a motion for leave to file a First
16 Amended Consolidated Class Action Complaint to assert claims for alleged violations of § 10(b)
17 of the Exchange Act and Rule 10b-5 thereunder;

18 WHEREAS, on May 14, 2008, this Court denied NYCERS’s motion for leave to file a
19 First Amended Consolidated Class Action Complaint (“Denial Order”);

20 WHEREAS, on June 12, 2008, this Court entered Judgment for the defendants
21 (“Judgment”);

22 WHEREAS, on June 17, 2008, NYCERS filed its Notice of Appeal of the Dismissal
23 Order, the Denial Order, and the Judgment (“NYCERS’s Appeal”);

24 WHEREAS, on June 27, 2008, plaintiffs Vogel and Mahoney filed a new class action
25 complaint in this Court alleging that certain defendants violated the Exchange Act, including
26 § 10(b) and Rule 10b-5 thereunder, and § 20(a). That action is styled *Martin Vogel and Kenneth*
27 *Mahoney v. Apple Inc., et al.*, Case No. 5:08-cv-03123-JF (N.D. Cal.) (“*Vogel II*”);
28

1 WHEREAS, pursuant to the parties' stipulation, on July 22, 2008, this Court entered an
2 Order staying *Vogel II* pending resolution of NYCERS's Appeal;

3 WHEREAS, on January 28, 2010, the Ninth Circuit Court of Appeals issued a ruling in
4 NYCERS's Appeal affirming the Dismissal Order and reversing the Denial Order;

5 WHEREAS, on February 19, 2010, the Ninth Circuit issued a mandate in NYCERS's
6 Appeal;

7 WHEREAS, on March 22, 2010, NYCERS filed a First Amended Consolidated Class
8 Action Complaint in *Vogel I* captioned *In Re Apple Inc. PSLRA Backdating Litigation* ("First
9 Amended Complaint");

10 WHEREAS, the Court has scheduled a Case Management Conference in *Vogel I* on April
11 30, 2010, at 10:30 a.m.;

12 WHEREAS, the Court has scheduled a Case Management Conference in *Vogel II* on April
13 9, 2010, at 10:30 a.m.;

14 WHEREAS, the parties believe that *Vogel I* and *Vogel II* concern substantially the same
15 parties, transactions or events and involve common questions of law or fact, and should be
16 deemed related pursuant to Civil Local Rule 3-12 and consolidated pursuant to Rule 42 of the
17 Federal Rules of Civil Procedure to avoid unnecessary cost or delay;

18 NOW, THEREFORE, THE PARTIES STIPULATE, AND THE COURT HEREBY
19 ORDERS, THAT:

20 1. *Vogel I* and *Vogel II* shall be deemed related pursuant to Civil Local Rule 3-
21 12 and *Vogel II* shall be consolidated with *Vogel I* pursuant to Rule 42 of the Federal Rules
22 of Civil Procedure and 15 U.S.C. § 78u-4(a)(3)(B). NYCERS shall be Lead Plaintiff and
23 Grant & Eisenhofer P.A. shall be Lead Counsel with respect to the consolidated action.

24 2. The docket in *Vogel I* (Case No. 5:06-cv-05208-JF) shall constitute the Master
25 Docket for this proceeding.

26 //

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28 //

Plaintiffs' Oppositions Due: July 27, 2010
Defendants' Replies Due: August 17, 2010
Hearing: To be set by the Court.

10. Defendants shall not be required to file any responsive pleading to the pending complaint in *Vogel II*.

IT IS SO STIPULATED.

Dated: April 7, 2010

GEORGE A. RILEY
O'MELVENY & MYERS LLP

By: /s/ George A. Riley
George A. Riley

Attorneys for Defendant
APPLE INC.

Dated: April 7, 2010

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11 Dated: April 7, 2010

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1 Dated: April 7, 2010

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MARTIN VOGEL and KENNETH
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17 I, George A. Riley, am the ECF User whose ID and password are being used to file this
18 Stipulation and [Proposed] Order Regarding Scheduling and Related Matters. In compliance with
19 General Order 45, X.B., I hereby attest that Douglas R. Young, Yohance C. Edwards, Michael J.
20 Barry, and Patrice L. Bishop have concurred in this filing.

By: /s/ George A. Riley
George A. Riley

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

26 DATED: April __, 2010

The Honorable Jeremy Fogel
United States District Judge

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